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AUTHORITIES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

NATIONAL ASSOCIATION OF WINDOW GLASS Manufacturers, National Window Glass Workers, et al., appellants,
v.
THE UNITED STATES OF AMERICA. } No. 353.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The petition.

The United States filed a petition in the District Court against the National Association of Window Glass Manufacturers, its officers, directors, and wage committee, the National Window Glass Workers, its officers, wage committee, executive board, and members, and sixty-two corporations engaged in the manufacture of hand-blown window glass, alleging that practically all of the hand-blown window glass manufactured in the United States is manufactured by the defendant corporations, and upwards of eighty

per cent is sold and shipped in interstate commerce. (R. 5.)

The petition alleges that more than fifty per cent of the defendant corporations belong to defendant National Association of Window Glass Manufacturers, and that more than ninety-five per cent of defendant hand-blown window glass workers of the United States belong to defendant National Window Glass Workers. (R. 6.)

It alleges that on or about September 16, 1922, as in each year for a number of years, the defendant association of manufacturers and the defendant association of workers, through their respective wage committees, agreed upon a wage-scale contract for the hand-blown window glass industry for the ensuing year or for such period thereof as it might be determined to allow hand-blown window glass factories to operate, which contract s enforced against all of the defendant corporations regardless of whether they belong to the defendant association of manufacturers. (R. 6.)

It alleges that in pursuance of a scheme to limit the activities of all the manufacturers of hand-blown window glass and of all the workmen engaged n that industry to a portion only of each year, it was agreed that approximately one-half of the defendant corporations would be granted a wage scale contract to operate a single factory from September 25, 1922, to January 27, 1923, and that the remainder of the defendant corporations would be granted a wage-scale contract to operatesingle factories from January

29, 1923, to June 11, 1923, and that none of the defendant corporations would be granted a wage-scale contract and permitted to operate the same factory during both periods. (R. 6.)

It alleges that every defendant corporation, to which a wage scale contract is granted, is required to sign said contract, and it is impracticable, if not impossible, for any manufacturer of hand-blown window glass to operate his factory unless he is granted and signs said wage scale contract. (R. 7.)

It alleges that the factories operating in the first period are owned by corporations which have signed the contract, and which under the terms of the contract are precluded from operating the same factories during the second period, and that those corporations which have kept their factories idle during the first period will be allowed to sign the wage scale contract and operate during the second period. (R. 7.)

It alleges that this wage contract, in so far as it limits the period of time during which the defendant corporations may operate their factories, has resulted and is resulting in a substantial curtailment of the production of hand-blown window glass, has suppressed and is suppressing competition as to the quantity of such glass produced, and has restrained and is restraining the interstate trade of such corporations in hand-blown window glass, in violation of Section 1 of the Sherman Anti-Trust Act, and that unless restrained and enjoined the defendant corporations and the defendant members of the workers'

executive board will continue to carry out the said wage scale contract limiting and prescribing the periods of operation. (R. 7.)

And it prays for a temporary restraining order, a preliminary injunction, and a final decree that the said contract, *in so far as it limits and prescribes the periods of time during which defendant corporations may or shall operate their factories*, is a contract in restraint of interstate trade in hand-blown window glass, in violation of the Anti-Trust Act, and adjudging that the defendants, their officers, agents, and employees, be enjoined from carrying out, or taking action to carry out, *that portion* of the wage scale contract or any similar contract or agreement. (R. 8.)

The restraining order.

The District Court issued the temporary restraining order as requested. (R. 10.)

The answers.

The defendant association, its officers and wage committee, and defendant manufacturers and the defendant workers made answers which are in most respects similar in substance. (R. 11–28.)

Those answers admit that substantially all of the hand-blown window glass manufactured in the United States is manufactured by the defendant corporations. (R. 12, 21.)

They admit that more than fifty per cent of the defendant corporations belong to defendant National

Association of Window Glass Manufacturers, and that more than ninety-five per cent of defendant hand-blown window glass workers in the United States belong to defendant National Window Glass Workers. (R. 12, 13.)

They admit that the Manufacturers' Wage Committee and the Workers' Wage Committee met about the day alleged and agreed upon a wage scale for the ensuing year. (R. 12, 13, 22.)

They admit that the wage scale for the first period was offered only to those who proposed to operate only in that period and that it would not be offered for the second period to those manufacturers who had operated in the first period. (R. 14, 25.)

They aver that every defendant corporation is at liberty to accept or reject said wage-scale contract, but admit that the only supply of labor available to the manufacturers is that of the National Window Glass Workers and allege that it is inadequate to permit the continuous and full operation of all plants at one time. (R. 14, 23.)

And they also allege facts which they claim justify the existence of this system of operating some factories only in one period and other factories only in other periods. (R. 14–20, 24–28.) Thus the manufacturers declare that if all of the factories were working at one time, the manufacturers would be obliged to make competitive bids for employees. (R. 20.)

It is significant that the fact that this was a super-combination between a combination of the manufac-

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turers and a combination of the laborers is admitted in the answer of the National Window Glass Workers, which concedes that "the members of the Manufacturers' Wage Committee and the members of the Workers' Wage Committee understood and agreed that the defendant corporations having factories for the manufacture of hand-blown window glass would be divided approximately into two periods and that certain of such defendant corporations would operate during the first period and others during the second period." (R. 22.)

The testimony.

At the trial the Government showed by witnesses from a number of different States that a very large percentage—at least 85 per cent—of the hand-blown window glass in which they dealt was shipped in interstate commerce (R. 97, 106, 107, 110, 112, 123, 124, 143, 146) and a number of these witnesses testified that because of the restrictions upon production imposed by the two-period system they were unable to supply all of their orders for interstate shipments.

The Government placed in evidence the wage scale (R. 197), which states the precise limits of each of the two periods. That both sides understood at the time of the agreement upon the wage scale the significance of this division of the working year into two periods of sixteen weeks and eighteen weeks, respectively, is shown by the admission of the manufacturers' association (R. 19) and of the

union (R. 26) that for several years the two-period system has been the settled practice in the industry, and by the more definite admission of the workers' union (R. 22, 23) that their committee and the manufacturers' committee had agreed that certain plants should operate during one period and other plants during the other period.

The secretary of the union testified that this was the plan which was followed (R. 42, 43, 45) and wrote in a letter which was produced at the trial that if the union granted a company's request for a wage-scale agreement which would enable the company to operate during two periods the union would be breaking faith with the manufacturers' committee (R. 58; see also 48, 59, 88).

The president of the union declared in a telegram produced at the trial that members would be notified that a company which wanted to operate was not on the list of plants to get the scale for the first period. (R. 51.) The secretary testified that "if the workmen work at a plant to which a scale has not been granted, we would sever their membership in the union. Those matters are provided for in our constitution and by-laws." (R. 83.) The national treasurer testified that there are very few nonunion hand-blown glass workers in the country and that a manufacturer could not obtain enough men to operate his plant successfully out of the union. (R. 93.) The president of a glass company also testified, "I don't think I can operate without a scale, because the members of the National Association of

Window Glass Workers will not work for any company that has not been given a scale. I can not get other men to do that kind of work who are not members of that association. I do not know of any workers I can get for that kind of work except from the Window Glass Workers Association. (R. 105.) * * * I couldn't operate if I didn't sign the wage scale. * * * I have no assurance I may get a scale in eight or nine months." (R. 106. See also 111, 123, 133, 145.)

Shortly prior to the making of the wage agreement in question a referendum had been submitted to the members of the union, and on this as on a later occasion the vote had been overwhelmingly against the proposed wage contract with its restriction on production by a two-period system. (R. 46, 47, 48, 82, 98, 99.) The first resolution dealt almost exclusively with the one-period system and stated its advantages. It was adopted by a vote of 1,029 for and 528 against. The second asked only for a one-period system and the retention of the three-shift system which was already in existence. It was adopted by a vote of 1,038 for and 279 against. The essential feature of both referendums was the demand of the workers for the one-period system. The wage committee of the union, having exclusive and final authority, refused to accept the view of a large majority of the union and of many of the manufacturers.

The Government showed repeated instances of companies which wanted to operate more than one

period and which were refused the wage scale for another period (R. 47–49, 56–60, 60–62, 62–64, 88, 95; see also 65–67, 68, 104, 106, 110, 120) even though the employees at the plant joined in the request of the manufacturer (R. 49, 62–64; see also 121). Manufacturers testified that with outstanding contracts for interstate shipments to fill, they were obliged to shut down at the termination of their short period of operation, thus imposing the entire cost of capital account and other overhead charges of the entire year upon a productive period of not over eighteen weeks. The uncontradicted testimony showed instances of refusal to grant a wage scale for a different period than the one assigned. (R. 49–56, 129, 130.) It showed that refusals were expressly based on the policy of allowing a plant to operate only eighteen weeks at most in each year. (R. 58, 60, 62, 87, 88.)

Manufacturers testified that they would have no difficulty in selling the products of their plants if allowed to operate more than one such period. (R. 106, 107, 110, 111, 115, 123, 124, 143.) Some of them said that they were willing to compete for the services of the men who were available. (R. 109, 132, 133.) Employers testified that they could not secure fair returns upon the investments in their plants by operating only a few months each year. (R. 106, 109, 146.) One of them said that he was considering the building of an additional plant in order to be able to operate another period in the new

plant. (R. 107, 108; see also 123.) One of them testified that he had actually built a second plant, at a large expenditure, in order to be able to operate two periods. (R. 159.) If a manufacturer elected to build another complete plant, he could operate it in a second period. The workmen at the end of one period walked from one factory to another and commenced the second period. This involved the construction of a wholly unnecessary plant, and as usual the public paid the freight.

The melting tank of a glass plant is very large. (R. 86.) Its temperature must be raised gradually until it reaches twenty-eight hundred degrees (R. 154, 382), a period of three weeks elapsing while the temperature is being raised to the required extent (R. 86, 106), and an expenditure of from two thousand to seventy-five hundred dollars for fuel, according to the location of the plant and the cost of fuel (R. 106, 123, 133, 144, 145, 165), being incurred before the first portion of the molten glass is ready for working. This is the additional expense for fuel incurred in starting a fresh fire. A company was not allowed to use the same tank through two successive periods. It must use two tanks in two distinct plants to have both periods (R. 56–60, 92, 93 bottom, 159; see also 84, 142). As stated, some manufacturers built two factories with two tanks in order to work for the two periods of 16 and 18 weeks, respectively. (R. 158, 159, 165; see also 93 bottom.) Even then they were limited to 34 weeks out of fifty-two.

Witnesses also called attention to the wandering life led by the workers, who must go from plant to plant. They told of wage reductions (R. 155) and of new requirements which overtaxed the strength of the workers (R. 175). Since the restriction on production by the two-period system, the number of men employed in the industry has been steadily growing less. (R. 94.) Previously it had been increasing. But those manufacturers who were willing to make employment desirable were unable to do so. They were not allowed to operate a plant more than either sixteen or eighteen weeks in any year, and if they want to compete for the services of workmen they were restrained by reason of the combination between the National Association of Window Glass Manufacturers and the National Window Glass Workers.

This unique plan of creating an artificial scarcity in a necessity of life did not exist prior to 1917. When the United States entered the World War glass was classified as a nonessential industry, and to conserve fuel and labor the factories, by order of the Government, restricted their output by one-half. This easy way to get the maximum of price from the public at the minimum of production proved so profitable that the present system was inaugurated after the close of the war to cut production to the minimum by an ironclad combination between employers and employees at the expense of the public, and it continued until the members of both classes were indicted and this bill was filed.

Decision of District Court.

At the conclusion of the hearing on the motion for a preliminary injunction, it was agreed that the case should be considered as on final hearing. Subsequently the court, by District Judge Westenhaver, filed an opinion sustaining all the contentions of the Government (R. 29–39), holding that the agreement between the Wage Committees of the Manufacturers and the Workers and all collateral agreements or understandings, in so far as they limit and prescribe, or have been the means employed to limit and prescribe, the periods of time within which defendant corporations might operate their factories, constitute contracts in restraint of interstate trade and commerce in violation of the Anti-Trust Act, and that the defendants should be perpetually enjoined from carrying out such agreements or any agreements or understandings collateral thereto, which should limit the periods within which defendant corporations might operate their factories, or any other contract and agreement of like character and purpose, and it entered a decree in accordance with this opinion (R. 39, 40).

ARGUMENT.

I.

The restraint is for an unlawful purpose.

The able and convincing opinion of Judge Westenhaver is its own vindication. To amplify what he has so well said seems a superfluity. Nevertheless, the Government attaches so much importance to this case, presenting as it does a monopoly of a most flagrant and indefensible character in an essential of life, that it feels constrained to submit its views, even though the applicable law has been better stated by the learned trial judge.

No more complete or indefensible monopoly was ever established in any antitrust case. It controls substantially all of the hand-blown glass industry. This commodity is an essential of life, a necessary material in a building industry, and this Court is not unaware that the deplorable condition of the building industry at this time (due to lawless combinations of both capital and labor, and greatly aggravated by the cessation of building during the war), not only has imposed intolerable hardship upon the public but has led to emergency legislation both by State and Nation, which has strained the constitutional powers of both governments to the very limit.

The essential facts of the case are virtually without dispute.

As will be hereafter argued, this court can condemn this combination on the undisputed wage contract alone. The case could also have been decided on bill and answer alone. The latter is a clear admission of guilt.

Prior to the great war many manufacturers of hand-blown glass had operated their factories as each thought best. Each worked it for as long a period during the year as he could sell his goods. Undoubtedly there was a general disposition on the part of manufacturers to avoid operations during the summer months, as glass workers work under conditions of very high temperature. However, the record discloses that some manufacturers had operated their plants for eleven months of the year. Thus prior to the great war—and except when freedom of competition was destroyed by other methods—the production and sale of glass was governed by laws of competition which the Sherman Law was enacted to maintain. In the case of each manufacturer it was a question of comparative industry, thrift, enterprise, and management. The race to the swift and the victory to the strong—that is competition.

The exigencies of the great war required the Government to make a partial restriction in the production of glass, but when the war had ended the exigency passed with it. Unfortunately in that period of restriction both manufacturers and the employees in this industry temporarily realized the advantages to them of limiting production. On the one hand, the manufacturers found that if production could be restricted below the demand of the public for the

product, the question of price was in their control and, thus basing an artificial price upon an artificial scarcity, they believed that they could make more money on a lessened production than if they met the demands of the market.

Similarly, those who controlled the glass workers' union erroneously believed that a compulsory restriction of production would increase the demand for the product and therefore the wages of labor. To centralize power the constitution of the union provided (sec. 13, art. 4):

> The matter of formulating a scale of wages and working rules shall be in the hands of the wage committee, *which shall have full authority*. (R. 338.)

This was interpreted as a virtual power of attorney to the wage committee to act as it pleased, without respect to the wishes of the members of the union. No other committee or officer had any authority in the matter, except that after the wage agreement was made the Executive Board applied it to each manufacturer by allotting to him the first or second period, or both, if he were willing to operate two distinct plants. Even a referendum of the members of the union was powerless to overrule the arbitrary action of the wage committee.

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II.

The restraint has been imposed against the wishes of many of the manufacturers and of a large majority of the workers.

Many of the manufacturers were in revolt against a system that put their individual enterprise into a strait-jacket. Many had built up a business and, as they testified, could have operated substantially throughout the year, except possibly in the summer months; and yet when their sixteen weeks' period had terminated the single factory manufacturer was obliged to remain idle for thirty-six weeks, even though in so doing he was obliged to break his contracts with customers to supply glass.

The record fairly reeks with the indignant protests of manufacturers and employees against a system which was so destructive of enterprise and thrift and so un-American. Vainly they tried to break the chains which bound them. Again and again manufacturers and workingmen of the same factory united in an appeal to the national organizations to permit them to operate a plant for a second period, and in every case their request was refused.

Both employer and employee were denied any freedom of action. Both had to do what the all-powerful wage committee dictated. No free labor market existed. The union had surrounded the industry with

a wall, that no one could surmount. No manufacturer could operate without the consent of the union, for unless he bowed to the will of the wage committee he could not get labor.

The whole industry, employer and employee alike, only existed by the sufferance of a wage committee consisting of eight members, whose power was absolute and who were responsible to no one for its exercise during their tenure of office.

Could an industry be more effectually sovietized?

The wrong to the employee was even greater than to the employer. It is not surprising that two-thirds of the employees protested. The wonder is that their protests against such restrictions were unavailing.

How more effectually could a combination, to use Jefferson's fine phrase in his first inaugural "take from the mouth of labor the bread it has earned" than by preventing a laborer from working for his employer more than eighteen weeks in one year?

A striking instance of this denial of freedom is disclosed in the testimony of C. P. Zenor and the correspondence between him and the President of the National Window Glass Workers. (R. 125–140.) Zenor had been a worker for fifteen years and then became the general manager of a factory. When he gave his testimony his plant had been idle because, as he testified, "we have not been permitted to operate—they, the labor organization, did not grant us a scale. We can not operate without a scale." (R. 125.) He knew why the hand-blown glass industry was, as so many witnesses said, a "dying

industry." It was not because hand-blown glass could not be produced in competition with machine glass but because the craft was being slowly strangled by arbitrary restrictions upon labor and unlawful combinations with manufacturers. The testimony shows that this was the view of many manufacturers and of a majority of the workingmen.

In a letter addressed to the President of the Glass Workers' Union, in which Mr. Zenor begged permission for himself and his workmen for the right to work his factory a longer period than one-third of the year, he wrote with more regard to the true American spirit of enterprise and industry than to the rules of orthography, as follows (R. 125):

> *I want to say to you that this* [the two period system] *is graduly putting the hand manufacturor out of business, And it is just a question of a very short time intill he is forced to close his plant indefonate.* You are going to see this very soon, Unless something unforseen takes place to prevent it, And if we are compelled to sink with the ship, I want to say that we will go down fighting. There are one thing that i forgot to mention to you, And that is this. When we came here and located our plant we entered in to an agreement with the Buisness mens club, And they with Harry Kelley, Wher by that we were to operate 8 months out of each year for three years, In order for them to give us a free site, and on the account of this 2 period proposition we could not carry this agreement out. Hence they have gone in to court and sued us for $7000 dollars for the site saying that we

had not complyed with our contract, When it has not been out fault, *for we have been ready and willing at all times to operate our plant, But were not permitted to do so*, And you are as well versed as to the reason as we are. Now if we were to allow our plant to ly idle this fall, I am quiet sure we would be compelled to pay this amount of money. I mite say that i think it is to redicolus to try to compell me or any one else to build an additionnal plant in order to operate on a two period system, And you are as well aware of the fact as we are that we have too many factories at presant. This argument will not hold good, As Mr J. R. Johnston Jr said in our home the last evening in the presant of several of us that had more plants now than we neaded, And could not understand why people still kept on building more plants. *I can answer this by saying that it is in order to keep up the price of glass. This is my opinion. If we were to be allowed to operate our plant one period for 6 Or 7 months we could pay the men more money and sell glass for 20¢ less and still make a good morgin of proffit. But we are compelled to close our plant after we have operated it 3 or 4 months and ly idle for 8 or 9 months in order to holde the umberrellor over a few eastern manufactors, And keep up the price of glass to a point where by we can make a little money and stay in the business.*

Mr. Zenor may have been short on orthography but he was long on common sense.

It requires little common sense to know that an industry which was so "cribbed, cabined, and confined," and which could only work at most for eighteen

weeks in the year, which was forbidden under penalties to introduce any labor-saving machinery or train new labor or employ nonunion labor, could not possibly survive as against the machine-made glass industry, which could operate for twelve months.

If it be true, as is claimed, that this alleged "dying industry" can not survive without the restrictions in question, then it is intolerable that the public should pay on capital expenditure for a whole year and only get in return a very restricted production of eighteen weeks. Such a proposition is economically indefensible. That such is not the case is clearly indicated by the fact that, until the industry was put on half-time during the war, it not only survived but, measured by the number of employees, was growing.

The testimony shows that hand-made glass is better in quality than machine glass, and presumably there will always be a market for the better quality. It is, however, unnecessary to theorize on this subject. The law of competition requires that the ability of any industry to survive should be put to the practical and unrestricted test. Let each manufacturer be free to operate his works as long as he can find sales for his products and it will follow that those will survive who meet an economic want. Eliminate the parasitic class and there will be enough manufacturers of hand-blown glass to meet, by normal and free production, an economic demand which must exist, or the industry would not have existed for so many years.

The distinguished counsel for the glass manufacturers makes much of his contention that the record does not disclose that glass increased in price by reason of the restriction. I never supposed that it was necessary to demonstrate that two and two make four. If a plant free from unlawful restrictions can be operated continuously, it certainly can produce glass more cheaply than if with an overhead and capital charge running throughout the year it can only produce for eighteen weeks. To throw the burden of capital charges and overhead, which inevitably run through fifty-two weeks, upon a production of eighteen weeks must be economically unsound, and must result in an attempt to obtain from the limited production of glass a sufficient profit to pay the overhead for the year.

The Government made little of the question of prices, for another indefensible feature of this monopoly was that there was no competition even in sales. The testimony of the manufacturers themselves was that, having originally pooled their sales through a common selling agency, they subsequently and apparently by concerted action sold at the price fixed by the leading factory in the machine glass industry. Thus there was as little competition in selling price as there was in production.

If a combination of manufacturers and their employees can under the guise of a wage agreement restrict production to less than one-third of the year, then obviously a coach and four has been driven through the Sherman Anti-Trust Law. All that the

offenders of that statute ever desired can thus be secured. Let us illustrate by citing one possibility.

Suppose that the anthracite and bituminous coal miners were all unionized and that they had given their leader, John A. Lewis, full authority to act in their behalf, and that as a result no mines could be run without the permission of Mr. Lewis. Suppose then that Mr. Lewis in cooperation with the mine owners directed that the mines should only be worked a third of the year, so that with an enormous resulting deficiency in the production of coal panicky prices would result.

Would such a nation-wide combination to restrict mining to one-third of the present productive capacity of the mines be justified under the Sherman Anti-trust Law? If thereby the interstate shipments in coal, which theretofore had been—let me assume for purposes of illustration—at the rate of fifteen million tons for a given period were reduced to five million tons by restricting mining to one-third of the working year, would it be contended that interstate commerce was not affected and that the Sherman Law was not violated? Could the vast capital investment in coal mines, which is an annual charge, be paid out of a production for one-third of the year without increasing the normal price of coal?

The coal situation is bad enough, but let this alleged wage agreement be sanctioned by this Court, and coal operators and labor leaders may see that profits and wages may both be increased by inflating the price of coal through the panicky efforts of the

hapless consumers to get some small portion of an artifically restricted and wholly inadequate supply.

The record contains many letters from manufacturers in which they requested permission to work more than the first period in order to fill unfilled orders, and in every case the request was denied.

We quote a few illustrative excerpts from the testimony.

Mr. Alfred D. Mann, a lawyer and connected with the Illinois Window Glass Company, testified (R. 110):

> This company is now in operation under the so-called first period. It hopes to continue in operation beyond January 27th; it would like to. I attended a meeting, I might say, in the interim between the adjournment last week and this morning, at which the entire membership or entire workmen's force was present, and the majority of stockholders in the company, I think, expressed themselves at that meeting in favor of continuing it the next period, if possible. They have business on hand or in process [*prospect*] which would warrant them in continuing during that period. They have orders for, I know, 20,000 boxes, which would have to be filled, part of them, in the next period. And they have orders in prospect in Missouri and in Wisconsin, besides some orders in Chicago. The 20,000 boxes are in Chicago which they will be unable to fill. Those orders they have in now will not carry them clear through what is known as the second fire, or

second period, but if they got those additional orders they have in prospect, it would, if the promises of the users of this glass were carried out, unless the orders fell down for some reason or were cancelled on us. In other words, the business is available, if you can take care of it; that is the promise. That is their business opinion or judgment of the situation.

Mr. D. Don Gregory, President of the Salem Co-operative Window Glass Company, testified (R. 111):

> Before the war we operated as many as eight or ten months out of the year. As near as I can remember, since this two-period system, it has been about an average of four months a year. The two-period system came in in the year 1917 and 1918; we had a scale with the Government where they put a restriction on non-essentials, and we started in on that in 1917 and 1918. I don't say that the Government inaugurated the two-period system; but the restriction on our output. The two-period system grew out of that restriction. The Government put a fifty per cent restriction on our output. At that time, in 1918, it meant we could operate only half the time. As to that condition prevailing to-day, it is really restricted to less than fifty per cent. *I can operate my plant ten months in the year easily and could sell my output.* Our product is marketed mainly through the Johnston Brokerage Company. *I am reasonably sure that company would be able to sell our entire output if we manufactured eight, nine, or ten months a year.*

The difficulty that the shackled manufacturers had with their creditors is well illustrated in the following letter from the Illinois Window Glass Company to the President of the Union (R. 122.):

Danville, Illinois, Nov. 27th, 1922.

National Window Glass Workers,
Cleveland, Ohio.
Attention Mr. Siemer

DEAR SIR:

I've been authorized by our Board of Directors to write to you, concerning the placing of our application to continue to operate into the second Period.

Understand that this is a vital point for this Company. We either must get this permission or close our doors forever! You have not forgotten the decision that was handed out to us last year, that we had to close down while our Company was heavily in debt.

Our Company this year never got over this debt, paying the coal the way we pay it at present, at $5.63 deliver- here per ton and we wish that you would get down with your Executive Board and figure out for yourselves *if this Company can make any profits or meet both ends together, by operating sixteen weeks per annum.*

We sincerely hope that you will consider the above, and allow us to operate this coming Period, so as to give us *a all* chance to get back on our feet.

Very truly yours,

ILLINOIS WINDOW GLASS CO.
JOHN B. PRINCE, *Mgr.*

The President of that Company further testified (R. 123):

> I was connected with the company before the war and before the day of the two-period plan of operation. At that time it was customary to operate eight months; we worked eight months once. It was customary to work from seven to eight and sometimes nine. The Illinois Window Glass Company has only been eight years in operation. It was an old company and the stockholders took it over. *If we were able to obtain the necessary labor, we would operate about, I judge, eight to nine months.*
>
> We have no difficulty in selling the products of our company. If our company is obliged to close down on January 27th, we will have some unfilled orders on hand. We sold our products direct this year. Some of our glass is shipped into states other than the state of Illinois.
>
> The investment of our company is approximately ninety-six thousand dollars. *We cannot make a fair return on that investment by operating four months a year.*
>
> We have considered building an additional plant in order to be able to operate in both periods. We was going to build one tank, just the tank, and not build any oven like Scohy had built at Sistersville, but the president advised us that he wouldn't leave us operate in one tank that way; we would have to build the ovens and producers and everything combined. We didn't want to spend that much money. The president I refer to is

Mr. Neenan, of the Workers Association, who was at that time president. That has been four or five years ago. I am sure that was considered since the two-period plan became effective, so as not to keep our men moving around.

Our company can compete with the machine interests. The hand-blown industry is a dying industry now, the way I look at it; she is now with this two-period.

Charles E. Bartram, President of the Buckeye Window Glass Company, testified (R. 146):

Prior to the adoption of this two-period plan, we generally run seven and a half months, *but along about 1909 or '10 there was no limit to the working time. I know one of those years I run ten months and a half and the other was nine months and something.* * * * If there were no restrictions now, I could operate very easily and comfortably up to the 25th of June. I could operate an average of seven and a half months, from seven and a half to eight months a year, till men can comfortably work in the factory.

* * * * *

I anticipate having unfilled orders on hand January 27th; we cannot fill all the orders we have. Those orders are for shipment in interstate commerce.

We have a $300,000 investment in the plant. We cannot make a fair return on that investment operating four months out of the year. The orders which will remain unfilled on January 27th we will simply have to cancel; and

the effect of that is that our customers will expect, if the price of glass goes up, they will expect us to fill those orders when we start making again; if the price of glass comes down, they will never say anything about it.

Our company, using the hand process, on an equal time of production, can compete with the machine companies.

The hand-blown window glass industry is a dying industry the way it is being handled.

These are but illustrative excerpts. The record is full of such testimony and it is substantially without contradiction.

III.

The existing deficiency in the labor supply is not natural but is due to restrictions imposed upon those who wish to work in the industry.

The only reply that is made is the alleged shortage of labor. The contention of the appellants is that if the sixty-two plants were all working continuously and concurrently, there would not be available labor to man one-half of them.

The record shows most clearly that the number of trained men engaged in the industry has shrunk from 4,598 in 1916–17 to 2,337 in 1922–23. (R. 117.)

In the former period there was no abnormal demand for glass to call for an unusual number of workers. While there were heavy expenditures for cantonment construction after the United States entered the World War, the normal peace-time construction of buildings was almost completely abandoned.

At the end of the War there was a great demand for new buildings to make up for the normal construction which had been omitted during the War, to meet the needs of a constantly increasing population, to accommodate the population which had shifted during the War, and to furnish better accommodations or safe investments for those who had profited by the war-time needs of the country and called for new buildings in spite of high costs. There has been in recent years and is now a great need for a more

adequate supply of houses, apartments, schools, and other structures throughout the country.

A witness for the appellants testified (R. 151) that ninety per cent of the glass manufactured goes into buildings that are just in process of erection, and not more than ten per cent is used for replacement purposes. "The market for glass depends entirely upon the activity of the building industry. If there is no building, there is no demand for glass; if there is very heavy building activity, there is a good demand for glass."

It is clear, therefore, that there is at the present time an abnormally large demand for glass. There should be engaged in the industry at least the normal number of men—and yet there are only half as many workers as in 1916–17.

The record discloses that the great reduction in the number of workers has occurred since the installation of the two-period system and that a large majority of the members of the union are opposed to that system. It prevents them from working at their trade more than eight months in each year, for they can remain only sixteen weeks in factories of the first group and eighteen weeks in factories of the second group. This makes it necessary for the employees to be separated from their families a large portion of each year, going from place to place to secure employment.

These glass workers, being American citizens, naturally revolted against a system which condemned them at best to eighteen weeks of idleness

in their occupation as glass workers, if they could secure employment in both groups of factories, and which compelled them to break up their homes twice a year and move on to some other factory. As previously stated, a referendum was twice taken upon the subject and in each case two out of three workingmen voted against the system.

Nothing in this record is more striking than that their wishes were ignored, their protests overruled, and they were compelled by the action of the Wage Committee to submit to the system. *This is the principal cause and obvious explanation of the shrinkage of the labor supply. The leaders of this union, in conjunction with the manufacturers' association, made labor conditions intolerable.*

We quote a striking resolution passed by one of the locals of the union in which the workingmen themselves show the effect of the restricted feature of the so-called wage agreement upon the supply of labor. The views therein expressed not only represented the opinions of the local union in question, but when their resolution that the two-period system of the wage agreement be abandoned was submitted to all the locals which formed the national union, the views hereinafter quoted were sustained by 1,029 affirmative votes as against 528 negative votes.

The resolution thus proposed and indorsed by the collective unions is as follows (R. 46–47):

> "The following resolution was read from the Premier Local, Pennsboro, West Virginia,

March 19, 1922. To the President and Executive Board. Brothers: We, the members of the Premier Local, Pennsboro, West Virginia, have logical reasons for believing that since the two-period arrangement has been in effect *it has been the primary cause of many of our members leaving the board for the following reasons:*

1. For a certain time each year more men are forced away from home and families than under the one period, and by that are denied the pleasures, comforts and necessities he has provided for himself and family, and in many instances it has been the direct cause of wrecking and destroying many good homes.

2. The expense made necessary by travel.

3. The expense and unpleasant features in boarding and living out of a suitcase.

4. In case of sickness in the family or yourself, also the worry and expense in connection with same when far away from home, and those who love him and he loves most dearly.

5. The four shifts in some factories is not and it is said cannot be enforced.

We now ask a square deal to all by rising and falling together. United we stand, divided we fall. So it behooves us to rise and fall together. Therefore we request that the Wage Committee at once get in communication with one another and formulate some plan to do away with the two-periods and four shifts before meeting with the manufacturers to formulate another wage scale. If it is impossible to get one period we believe, if it is necessary to have two periods,

it should be for all factories at one time; then all can return to their loved ones once more and the home and comforts he has provided.

Therefore be it resolved that the Wage Committee use their best efforts to secure the one-period, three shift system at their next Wage Conference."

As previously explained, the wish of the workmen was overruled by the wage committee under its arbitrary power to determine finally the wage agreement.

Later in the year another local again brought up the subject and proposed one eight-month period as against two periods of sixteen and eighteen weeks. The resolution was as follows (R. 48):

Brothers: The members of the Texarkana, Texas, local request that the following resolution be submitted for referendum action: be it resolved that on and after the passage of this resolution that the president and Wage Committee be authorized to issue to any manufacturer a wage scale to operate from October 1st to May 29th, 1923–24, and thereafter, and that during this working period the three-shift system be enforced. This resolution was read at a special meeting of the Twin City Local, Texarkana, Texas, on the 29th day of October, 1922, and was approved as read. Signed, Moses J. Bell, chairman, Calvin Wescott, secretary, R. Vogelman, Chief Preceptor.

Other local unions requested permission to work two periods instead of one, and all were denied the privilege.

The shortage of labor was also due to the restrictions upon the manufacturers in the securing of the necessary workers. They could not easily, if at all, secure nonunion labor, for the glass workers' art requires training and knowledge and the union men would not work side by side with nonunion men. The union took abundant pains to limit the supply of labor. The minutes of its Executive Board show that the "regular apprentice applications" which were granted were exclusively those of applicants who were closely related to men who were already master workmen (R. 237, 254, 283, 309), and, while some other applications were granted, these were the only ones which were regarded by the union as "regular apprentice applications." The record discloses not only the refusal of many applications to learn the trade but many cancellations of certificates of apprenticeship. Moreover, no one could learn the trade except by permission of the union and no worker was allowed to train more than one apprentice at a given time.

If any member attempted to induce a glass worker to come to this country to supply the alleged shortage, he was fined $100 for the first offense; suspended for one year for the second offense; and expelled for the third. (Sec. 1, Art. 7.)

While persons born abroad were not excluded from the union, the supply of labor was limited by preventing any immigrant from working, except by special permission, unless he had been in this country for a period of five years and had become a citizen. (Sec. 1, Art. 4.) This was equivalent to the liberty of the daughter who was graciously allowed to go out to swim, but forbidden to go near the water.

The shortage of labor is due to union restrictions which have driven from the industry nearly one-half of the trained men who were making window glass only a few years ago. While skilled workers in other trades are receiving good wages and steady employment in their home towns, the window-glass workers are required by this plan to travel from place to place, staying but a few months at any plant, living away from their homes, with the increased expense as well as discomfort which this entails. Naturally men have left the industry by the thousands, and they will not be brought back into it until the system which is imposed against the wishes of two-thirds of the men who are still in the industry has been abolished.

So also if the union were willing to admit more apprentices and otherwise increase its membership and abandon the two-period system, the supply of labor at attractive wages would not be wanting.

Many other restrictions of the union upon the freedom of labor could be quoted to show why their members are steadily diminishing. Many of these are not

in the constitution of the union but are embodied in the so-called wage scale. Although much of the work is compensated by piecework, the skillful and industrious are penalized for the benefit of the unskillful and the slothful by a restriction on the amount of work each can do. Thus the amount of work that a blower or grinder or cutter can do in any one day is limited under penalties imposed by the union for exceeding the limit. Even new inventions, however beneficent, are anathema, for it is provided by section 2, article 6, of the wage scale (R. 350) that any manufacturer who introduces "new inventions or supposed improvements shall, so long as said improvements continue to be an experiment or until it shall have been demonstrated that it will not be a loss to the workmen, pay a guaranty to all workmen whose work is or may be affected by said machinery or inventions."

We appreciate that the Federal Government has nothing to do with these working conditions in so far as they only *incidentally and remotely affect production of interstate products.* Reference is only made to them to answer the contention that the *deliberate* and *direct* restraint of production under the wage agreement is explained and justified by the shortage of labor.

Undoubtedly there is an unfortunate shortage of labor at a time when the Nation has the most urgent need of these and other building materials. But, as stated, the shortage is not natural but artificial, and is due to the fact that the union has surrounded itself with so high a wall and with such burdensome re-

strictions that not only have those outside no desire to come in but many of those who are inside have a strong desire, as manifested by their acts, to scale the walls in order to obtain greater freedom.

It is significant that the shrinkage in labor began in the two-period system. Before it was put into operation the supply of labor was steadily increasing. This is shown by the following figures which we quote from the able brief of the glass manufacturers (see page 9):

Year.	Number of men.	Year.	Number of men.
1914–15	3,779	1919	3,859
1915–16	4,116	1920–21	3,777
1916–17	4,508	1921–22	3,209
1917–18	4,192	1922–23	2,337

The necessary labor can be secured if the effort were permitted.

It is also contended that with the available labor supply as much hand-blown glass is produced in the restricted period as could be produced by the industry. But here again the assertion, if true, is based upon the voluntary act of the manufacturers and the union leaders in driving trained men out of the industry, greatly restricting the training of new workers, and then using the shortage of labor as an excuse for restricted production.

It is common sense that, free from these unlawful restrictions, the glass companies could produce in an entire year more than they are now producing in two-thirds of a year. Any other conclusion is a strain on credulity.

IV.

The plan restrains interstate commerce.

Separately considered, some portions of this alleged wage agreement are undoubtedly lawful. The Anti-Trust Act does not forbid workers to organize and bargain collectively with an employers' association or with individual employers as to the wages which shall be paid. Nor does this Act, nor even the power of Congress, extend to the regulation of the conduct of manufacturers in every case in which some of the products of their factories may pass into interstate commerce.

But the actions of this union in agreeing or refusing to agree with separate manufacturers were not simply the innocent and lawful transactions which they purported to be. They were not simply isolated transactions without ulterior motives. They were steps in the execution of an illegal plan upon which there had been an earlier agreement or understanding between the manufacturers' association and the union.

The manufacturers' association comprised the major portion of the manufacturers of hand-blown window glass, and controlled all, and the union comprised substantially all of the workers in the industry. These two organizations, against the wishes of a number of manufacturers and of an overwhelming majority of the workers, imposed their plan upon *all* of the plants

in the country. The manufacture of the glass was so regulated that no plant could operate more than eighteen weeks in the year and one-half of the plants could operate only sixteen weeks out of fifty-two.

Those plants are located in a number of different States. It was alleged and proved that a large portion of the glass manufactured was shipped in interstate commerce, that dealers in the glass were not able to fill all of their orders for interstate shipment and that interstate commerce was very materially restrained by the severe time limits which were imposed by virtue of the agreement between the manufacturers' association and the union. The restraint was not merely minor and incidental but great and intentional.

The learned counsel for the defendants contend that manufacturing alone is involved and that therefore the Anti-Trust Act does not apply. They rely largely upon *United States* v. *E. C. Knight Company*, 156 U. S. 1, where the Government's case was inadequately presented in pleadings and evidence and where, on the other hand, the opinion of the Court contained expressions which do not so fully represent the present view of the Court as to what constitutes a direct restraint upon interstate commerce as may be found in the dissenting opinion of Mr. Justice Harlan.

Opposing counsel further make a brief but very inadequate quotation from the opinion of this Court in *United Mine Workers* v. *Coronado Coal Company*, 259 U. S. 344. Upon the very able opinion of the Court in

the latter case the Government may well rely in support of its contention that the plan of the defendants restrained interstate commerce in violation of the Anti-Trust Act.

In the *Coronado case* it was charged that a conspiracy to prevent the mining of coal in one mine which produced in the maximum not more than 5,000 tons per week out of a total national production of from 10,000,000 to 15,000,000 tons per week was a conspiracy to restrain interstate commerce. The Court pointed out that the proportion of the total interstate commerce thus affected was so extremely small that the conspiracy could not have any appreciable effect upon such commerce. Surely the reasons given by the Court for its decision in this case do not support the proposition that interstate commerce is not restrained by an agreement or understanding under which *every* plant for the manufacture of hand-blown window glass in the entire country was to be kept closed approximately two-thirds of the entire year, although at least 85 per cent of the products of those plants was shipped in interstate commerce.

In the *Coronado case* the Court said (259 U. S. 407–412):

> Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. * * * Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to

by carried in that commerce. We have had occasion to consider the principles governing the validity of congressional restraint of such indirect obstructions to interstate commerce in *Swift & Co.* v. *United States*, 196 U. S. 375; *United States* v. *Patten*, 226 U. S. 525; *United States* v. *Ferger*, 250 U. S. 199; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; and *Stafford* v. *Wallace*, 258 U. S. 495. It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint. Again, it has the power to punish conspiracies in which such practices are part of the plan, to hinder, restrain or monopolize interstate commerce. But in the latter case, the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances. * * *

If unlawful means had here been used by the National body to unionize mines whose product was important, actually or potentially, in affecting prices in interstate commerce, the evidence in question would clearly tend to show that that body was guilty of an actionable conspiracy under the Anti-Trust Act. This principle is involved in the decision of the case of *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, and is restated in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184. But it is not a permissible interpretation of

the evidence in question that it tends to show that the motive indicated thereby actuates every lawless strike of a local and sporadic character, not initiated by the National body but by one of its subordinate subdivisions. * * *

In *United States* v. *Patten*, 226 U. S. 525, running a corner in cotton in New York City by which the defendants were conspiring to obtain control of the available supply and to enhance the price to all buyers in every market of the country was held to be a conspiracy to restrain interstate trade because cotton was the subject of interstate trade and such control would directly and materially impede and burden the due course of trade among the States and inflict upon the public the injuries which the Anti-Trust Act was designed to prevent. Although running the corner was not interstate commerce, *the necessary effect of the control of the available supply would be to obstruct and restrain interstate commerce and so the conspirators were charged with the intent to restrain.* * * *

And so in the case at bar, coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce *unless the obstruction to mining* is intended to restrain commerce in it or *has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred.* * * *

But it is said that these District officers and their lieutenants among the miners must

> be charged with an intention to do what would be the natural result of their own acts; that they must have known that obstruction to mining coal in the Bache-Denman mines would keep 75 per cent of their output from being shipped out of the State into interstate competition, and to that extent would help union operators in their competition for business. *In a national production of from ten to fifteen million tons a week,* or in a production in District No. 21 of 150,000 tons a week, *5,000 tons a week which the Bache-Denman mines in most prosperous times could not exceed would have no appreciable effect upon the price of coal or nonunion competition.* The saving in the price per ton of coal under nonunion conditions was said by plaintiffs' witnesses to be from seventeen to twenty cents, but surely no one would say that such saving on 5,000 tons would have a substantial effect on prices of coal in interstate commerce. Nor could it be inferred that Bache intended to cut the price of coal. His purpose was probably to pocket the profit that such a reduction made possible. (Italics ours.)

The decisions of this court fully support the distinctions set forth in the *Coronado case.* In addition to the cases there cited the court might, for example, have referred to *American Column & Lumber Co.* v. *United States,* 257 U. S. 377; *United States* v. *Reading Co.,* 226 U. S. 324, 353, 367, 370; and *Nash* v. *United States,* 229 U. S. 373, 380.

In the *Lumber Co. case* the court sustained an injunction against acts which merely tended to restrict

production, although the members of the combination did not, as in the instant case, obligate themselves to do so. They simply exchanged information, so that the Executive Secretary could as a bellwether of the flock so guide the members that they could—each acting voluntarily but obviously with an implied understanding—keep the supply below the demand. Such restriction of production was the "head and front" of the lumber combination's offending.

In the *Reading Company case* contracts for the purchase of coal in Pennsylvania from Pennsylvania mine owners were declared illegal, the court saying (p. 370) that—

> the extent of the control over the limited supply of anthracite coal by means of the great proportion theretofore owned and controlled by the defendant companies, and the extent of the control acquired over the independent output which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly restrain *the freedom of production*, transportation, and sale of the article at tidewater markets.

And in *Nash* v. *United States* the court held that even such misconduct as false raising of grades and false gauging, if in pursuance of a conspiracy in restraint of interstate commerce, would constitute violations of the Anti-Trust Act.

The later decisions in *C. A. Ramsay Co.* v. *Associated Bill Posters*, 260 U. S. 501, 511; and in *United States* v. *American Linseed Oil Co.*, 262 U. S. 371,

in both of which combinations were declared to be in violation of the Anti-Trust Act, bear out the distinctions laid down in the *Coronado case*.

In the *American Linseed Oil Co. case* the court said:

> The Sherman Act was intended to secure equality of opportunity and to protect the public against evils commonly incident to monopolies and those abnormal contracts and combinations which tend directly to suppress the conflict for advantage called competition—the play of the contending forces ordinarily engendered by an honest desire for gain.

To hold that a nation-wide conspiracy to restrict production by absolute agreement of a product 85 per cent of which goes into interstate trade, is not within the inhibition of the Sherman law would be a surprising departure from the accepted doctrine of this Court.

V.

The Clayton Act does not exempt the agreements involved in this case from the operation of the antitrust laws.

Section 6 of the Clayton Act (38 Stat. 730, 731) provides:

> That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully *carrying out the legitimate objects thereof;* nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

In view of this section it is clear that while unincorporated labor organizations are subject to the provisions of the antitrust laws and may be sued (*United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, 385, 391), organizations of workers are not *ipso facto* illegal. When those organizations are carrying out their "*legitimate*" objects, they are not restrained by the Anti-Trust laws. They are protected, however, only when carrying out such objects. Just as this court has held that while owners of patents and copyrights possess special privi-

leges, they can not go beyond those privileges and limit resale prices without violating the Anti-Trust Act (*Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 48, 49; see also *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373, 408, 409; *Boston Store* v. *American Graphophone Co.*, 246 U. S. 8), so also it has held that while workers may organize to attain the normal and "*legitimate*" objects of a labor organization, they may not so extend the activities protected under section 6 of the Clayton Act as to defeat the general purposes of the Anti-Trust laws. The right to combine and act collectively in fixing wages gives them no charter to override the great public policy of the Nation as formulated in the Sherman law.

No doubt remains on this point since the conclusive decision of this court in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 469, where it said:

> The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the anti-trust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from *lawfully* carrying out their *legitimate* objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination

> or conspiracy in restraint of trade. And *by no fair or permissible construction can it be taken as* authorizing any activity otherwise unlawful, or *enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws.* (Italics in last sentence ours.)

The Government does not contend that the National Window Glass Workers is in itself an illegal combination. It challenges simply one provision of the agreement or understanding between the union and the National Association of Window Glass Manufacturers and the subsequent proceedings in execution of that portion of the agreement. Such a provision would be clearly illegal but for the fact that one of the parties thereto is a labor union; and under the decision in the *Duplex Printing Press case* the participation of the union in an otherwise illegal combination or conspiracy does not make the combination or conspiracy legal.

The defendants' brief compares the separate wage agreements with agreements of waiters to serve in Florida during the winter and in Maine during the summer. But there is no real competition between winter and summer resorts which would thus be suppressed. No hotel keepers' association could reduce competition between the southern and northern resorts by united action with a union of the waiters. Therefore that illustration does not present a case analogous to the one which is now before the court. To say the least, it is far-fetched.

VI.

The intentions of the defendants when thus restraining interstate commerce are immaterial.

The defendants contend that their way was paved with good intentions. This court has pointed out that it is immaterial whether or not the motives of the defendants were good.

In *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243, the court said:

> It is useless for the defendants to say they did not intend to regulate or affect interstate commerce. They intended to make the very combination and agreement which they in fact did make, and they must be held to have intended (if in such case intention is of the least importance) the necessary and direct result of their agreement.

In *United States* v. *Patten*, 226 U. S. 525, 543, it said:

> Bearing in mind that such was the nature, object and scope of the conspiracy, we regard it as altogether plain that by its necessary operation it would directly and materially impede and burden the due course of trade and commerce among the States and therefore inflict upon the public the injuries which the Anti-trust Act is designed to prevent. * * * That there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown

by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result.

In *United States* v. *Reading Co.*, 226 U. S. 324, 370, it said:

> Whether a particular act, contract or agreement was a reasonable and normal method in furtherance of trade and commerce may, in doubtful cases, turn upon the intent to be inferred from the extent of the control thereby secured over the commerce affected, as well as by the method which was used. *Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence.* * * *
>
> In the instant case the extent of the control over the limited supply of anthracite coal by means of the great proportion theretofore owned or controlled by the defendant companies, and the extent of the control acquired over the independent output which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly restrain the freedom of production, transportation and sale of the article at tide-water markets. (Italics ours.)

In *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 49, the court pointed out that in

Standard Oil Company v. *United States*, 221 U. S. 1, and in *United States* v. *American Tobacco Company*, 221 U. S. 106, 181—

> the comprehensive and thorough character of the law is demonstrated and its sufficiency to prevent evasions of its policy "by resort to any disguise or subterfuge of form," or the escape of its prohibitions "by any indirection." * * * Nor can they be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results.

VII.

The agreement shows on its face that it constitutes a restraint of trade in violation of the Anti-Trust Act.

Under this agreement every manufacturer of hand-blown window glass in the United States is required to keep his plant closed two-thirds of the year, no matter how great may be the demand for glass in the building industry, no matter how eager he may be to manufacture or how earnestly the men in his plant may wish to continue in his employ.

Such an agreement can not endure for a moment under the rule laid down in *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 244, 245:

> Total suppression of the trade in the commodity is not necessary in order to render the combination one in restraint of trade. *It is the effect of the combination in limiting and restricting the right of each of the members to transact business in the ordinary way, as well as its effect upon the volume or extent of the dealing in the commodity that is regarded.* (Italics ours.)

VIII.

CONCLUSION.

If it be true that the hand-blown window glass industry is dying, this condition is due to violations of the law which the Government is here seeking to enforce.

Is it without significance that the secretary of the union (the other salaried officer) receives each week from each company a statement as to the quantity of glass produced by that company in the preceding week (R. 350), giving to one person who is in constant touch with the manufacturers' association and working very much in harmony with that association information which if it were received by the association directly would be helpful to it, if its purpose is to create an artificial scarcity in the product in order to inflate prices?

May not the unwillingness of the Wage Committee to respect the wishes of their constituents as to the abolition of the two-period system be explained by the inference that that Committee is itself dominated by the manufacturers' wage committee who wish to create such artificial scarcity and thus accomplish what this Court condemned in the *American Column & Lumber Case*. (*Ante, p. 45.*)

The only effect of restricting production of building materials at the present time of extreme need, is

the maintenance of war price levels upon peace-time necessities.

If the union officials really desire to secure employment at glass making for those trained men who have left the industry in the past few years and the manufacturers' association really desires to make the glass plants produce glass up to their capacity, they can secure such aims by abandoning restrictions upon production and by allowing manufacturers to compete for workers.

The law has provided an adequate remedy for such evils as afflict this industry—freedom of competition.

Blow into the lungs of this industry the pure air of freedom for employer and employee alike and there will be no further talk of a "dying industry."

Any industry which receives nourishment only a fraction of the year and is thereafter starved and asphyxiated is apt to be a "dying industry."

What the patient needs is air.

JAMES M. BECK,
Solicitor General.

ROBERT P. REEDER,
Special Assistant to the Attorney General.

NOVEMBER, 1923.

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